



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2020-0093; FRL-10005-86-Region 7]

**Air Plan Approval; Iowa; Infrastructure State Implementation
Plan Requirements for the 2015 Ozone National Ambient Air
Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain elements of a State Implementation Plan (SIP) revision submission from the Iowa Department of Natural Resources (IDNR) addressing the applicable requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). Section 110 requires that each state adopt and submit a SIP revision to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the State's responsibilities under

the CAA. In this action, the EPA is proposing to approve the interstate transport portions of the State's 2015 Ozone NAAQS infrastructure SIP submittal.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2020-0093 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7214; email address kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2020-0093, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment

contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is Being Addressed in this Document?

The EPA is proposing to approve portions of the infrastructure SIP submission received from the State on November 30, 2018, in accordance with section 110(a)(1) of the CAA. Specifically, the EPA is proposing to approve the following elements of section 110(a)(2)(D)(i)(I) - significant contribution to nonattainment (prong 1), and interference with maintenance of the NAAQS (prong 2). The EPA will address other elements of section 110(a)(2) including: (A) through (C), (D)(i)(II) - prevention of significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M) in a separate rulemaking. EPA previously approved Iowa's protection of visibility (prong 4) SIP in a separate action. See *84 FR 66075*.

III. Have the Requirements for Approval of a SIP Revision Been Met?

The submission has met the public notice requirements of 40

CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for the submission from September 18, 2018, to October 19, 2018. The State received two comments during the comment period and addressed them in the final SIP submission to the EPA.

IV. Background

A. General Framework for Analyzing Interstate Transport

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).¹ Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).² One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called “prongs” within

¹ National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

² SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

CAA section 110(a)(2)(D)(i): section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This proposed action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another State (prong 1) or interfere with maintenance of the NAAQS in another State (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).³

We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the 2011 Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter

³ See *North Carolina v. EPA*, 531 F.3d 896, 909-911 (2008).

standards, and the 2016 Cross-State Air Pollution Rule Update (CSAPR Update), which resolved certain good neighbor obligations for the 1997 ozone NAAQS and partially addressed interstate transport for the 2008 ozone NAAQS.⁴

Through the development and implementation of CSAPR, the CSAPR Update, and previous regional rulemakings pursuant to the good neighbor provision,⁵ the EPA developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS. This framework provides a reasonable and logical structuring of the key elements that should be considered in addressing the requirements of the good neighbor provision. While states are not mandated to follow this structure in preparing good neighbor SIPs, it has been upheld as a reasonable approach to address good neighbor requirements by various courts, including the U.S. Supreme Court, and the EPA generally uses the framework to evaluate whether state SIP submittals can be approved under the good neighbor provision.

⁴ See 76 FR 48208 (August 8, 2011) (CSAPR) and 81 FR 74504 (October 26, 2016) (CSAPR Update). As discussed later in this document, the D.C. Circuit Court of Appeals in *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019), remanded the rule to the extent it failed to eliminate states' significant contributions in accordance with downwind attainment dates.

⁵ Other regional rulemakings addressing ozone transport include the NO_x SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

Step 1: Identify downwind air quality problems relative to the ozone NAAQS. The EPA historically identified downwind areas with air quality problems, or receptors, using air quality modeling projections for a future analytic year and, where appropriate, considering monitored ozone data. The agency relied on modeled and monitored data to identify receptors expected to be in nonattainment with the ozone NAAQS in the future analytic year, and relied on modeled data to identify additional receptors that may have difficulty maintaining the NAAQS in the future analytic year, notwithstanding clean monitored data or projected attainment. These latter receptors are sometimes referred to as "maintenance-only" receptors.

Step 2: Determine which upwind states contribute to these identified downwind air quality problems sufficiently to warrant further analysis to determine whether their emissions violate the good neighbor provision. These states are referred to as "linked" states. Historically, the EPA identified such upwind states as those modeled to impact a downwind receptor in the future analytic year at or above an air quality threshold equivalent to 1 percent of the ozone NAAQS. However, as discussed below, the EPA recognizes that there may be other methods of defining a "contribution" threshold that are reasonable and appropriate to apply.

Step 3: For states linked to downwind air quality problems, identify upwind emissions on a statewide basis that will significantly contribute to nonattainment or interfere with maintenance of a standard at a receptor in another state. In the EPA's prior rulemakings addressing interstate ozone pollution transport, the agency has used cost-based and air quality-based criteria to evaluate regionally uniform NO_x control strategies that were then used to quantify the amount of a linked upwind state's emissions, if any, that will significantly contribute to nonattainment or interfere with maintenance in another state in the future analytic year. The agency then established emissions budgets reflecting remaining emissions levels following the reduction of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind.

Step 4: For upwind states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implement the necessary emissions reductions within the state through permanent and enforceable measures. In the CSAPR Update, for instance, the EPA implemented the emissions budgets for upwind states found to

have good neighbor obligations via Federal Implementation Plans (FIPs) requiring certain large power plants in the upwind states to participate in the CSAPR NO_x Ozone Season Group 2 Trading Program.

B. EPA Memoranda Regarding the 2015 Ozone NAAQS

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. In these documents, the EPA made clear that the information provided is to assist states' efforts to develop good neighbor SIPs. While the information in those documents, including associated air quality data, could be used to inform the development of such SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision.

On January 6, 2017, the EPA published in the **Federal Register** a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.⁶ The EPA used the 2023 analytic year for this preliminary modeling because that year aligns with the 2015 ozone NAAQS attainment year for

⁶ See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

Moderate ozone nonattainment areas.⁷ On October 27, 2017, we released a memorandum (October 2017 memorandum) containing updated projected ozone design values for 2023, which incorporated changes made in response to comments on the NODA.⁸ In the October 2017 memorandum, we specifically stated that the updated 2023 modeling data may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS. The October 2017 memorandum did not address the 2015 ozone NAAQS. Subsequently, on March 27, 2018, we issued a memorandum (March 2018 memorandum) indicating the same 2023 projected ozone design values released in the October 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step interstate transport framework). The March 2018 memorandum also included newly available contribution modeling results to assist states in evaluating their impact on projected downwind air quality problems (step 2 of the four-step interstate transport framework).⁹

⁷ 82 FR 1735 (January 6, 2017). The basis for selection of the analytic year is further discussed in Section IV.A below.

⁸ See Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action and at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

⁹ See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

The March 2018 memorandum describes the methods and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state contributions to those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the October 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (i.e., monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: first, following the EPA's historical "3 x 3" approach¹⁰ for all sites, and second, following a modified approach for coastal monitoring sites in which "overwater" modeling data were not included in the calculation of future year design values (referred to as the "no water" approach).

¹⁰ See March 2018 memorandum, p. 4.

For purposes of identifying potential nonattainment and maintenance receptors in 2023 (step 1), the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured design values¹¹ exceeding the NAAQS that also have projected average design values (i.e., modeled average 2023 values) exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values (i.e., modeled maximum 2023 values) exceeding the NAAQS. Sites identified as *only* maintenance receptors included sites with 2016 measured design values below the NAAQS but with projected average and maximum design values exceeding the NAAQS and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in attachment B to the March 2018 memorandum.

¹¹ The EPA used 2016 ozone design values, based on 2014 – 2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B-1.

As described further in the March 2018 memorandum, after identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to determine the expected impact from each state to each nonattainment and maintenance receptor in 2023.¹² The EPA included contribution information resulting from the source-apportionment modeling in attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the October 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this proposed action.

On August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Similar to the process for selecting the 1 percent threshold for the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update, respectively, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of pollution transported from upwind

¹² As discussed in the March 2018 memorandum, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall (i.e., on average across all receptors), to the amount captured using a threshold equivalent to 1 percent of the 2015 ozone NAAQS (i.e., 0.70 ppb). Specifically, the data indicated that using a 1 percent threshold captures 77 percent of the total upwind contribution when summed across all receptors and using a 1 ppb threshold captures 70 percent when summed across all receptors. By contrast, using a 2 ppb threshold captures 55 percent of the total upwind contribution, much less of the total contribution summed across all receptors. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the 1 percent threshold, at step 2 of the four-step interstate transport framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.¹³

¹³ See August 2018 memorandum, p. 4.

V. Iowa's SIP Submission

On November 30, 2018, Iowa submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Iowa chose to rely on the results of EPA's 2023 modeling, as presented in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Iowa. Based on Iowa's review of the EPA's modeling assumptions and model performance evaluation, Iowa determined that EPA's future year projections were appropriate for purposes of evaluating Iowa's impact on attainment and maintenance of the 2015 ozone NAAQS in other states.

Iowa relied on EPA's 2023 modeling to conclude that the state does not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Iowa referred to the analytic information in EPA's August 2018 memorandum as a basis to use a 1 ppb contribution threshold when evaluating the state's contribution to downwind receptors at step 2 of EPA's four-step interstate transport framework. Using EPA's modeling, Iowa identified that it is projected to contribute below 1 percent of the 2015 ozone NAAQS (i.e., less than 0.70 ppb) to all but two downwind receptors: the

nonattainment receptor in Milwaukee County, Wisconsin (Milwaukee receptor), and the maintenance-only receptor in Allegan County, Michigan (Allegan receptor). Iowa's contribution to these two receptors is between 1 percent and 1 ppb. Iowa concluded that 1 ppb is an appropriate contribution threshold to apply with respect to the 2015 ozone NAAQS and that Iowa's emissions therefore do not contribute to nonattainment or maintenance problems at either receptor.

Iowa notes that its 2023 modeled contribution to the Milwaukee receptor is 0.79 ppb, and its 2023 modeled contribution to the Allegan receptor is 0.77 ppb. Consistent with the regional analysis provided in the August 2018 memorandum, Iowa further notes that application of the 1 ppb threshold captures 83 percent of the upwind contribution captured at the 1 percent threshold at the Milwaukee receptor and 94 percent of the upwind contribution captured at the 1 percent threshold at the Allegan receptor. Based on these data, Iowa concludes that the 1 ppb threshold is therefore appropriate because it captures a "substantial portion" of the transported contribution from upwind states when compared to the 1 percent threshold at both receptors. Because the state's impact on both receptors is below the 1 ppb threshold, the state concluded that

its emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in downwind states.

VI. EPA's Analysis

The EPA proposes to approve Iowa's SIP submittal concluding that the State will not contribute significantly to downwind nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states, including its reliance on the information and modeling presented in EPA's October 2017 and 2018 memoranda. The EPA presents additional analysis in support of the use of the 2023 analytic year, as well as the State's selection of the 1 ppb contribution threshold.

A. Use of 2023 analytic year

On September 13, 2019, the D.C. Circuit issued its decision in *Wisconsin v. EPA* addressing legal challenges to the CSAPR Update, in which the EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by

which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, the EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute - as well as legal precedent - to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

The EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024, Moderate area attainment date for the 2015 ozone NAAQS. The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in the EPA's modeling.¹⁴ However, as explained below, the EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

¹⁴ The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, <https://www3.epa.gov/airquality/greenbook/jbtc.html> (last updated Sept. 30, 2019).

The good neighbor provision instructs the EPA and states to apply its requirements "consistent with the provisions of" title I of the CAA. CAA section 110(a)(2)(D)(i); see also *North Carolina v. EPA*, 531 F.3d 896, 911-12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans "contain adequate provisions prohibiting" certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina*, and more recently in *Wisconsin*, the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. See *North Carolina*, 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin*, 938 F.3d at 313-18.

While the EPA recognizes, as the court held in *North Carolina* and *Wisconsin*, that upwind emissions reduction obligations therefore must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning

requirements and attainment date under CAA section 182 lead the EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the CAA, states with areas designated nonattainment are generally required to submit, as part of their SIP, an "attainment demonstration" that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. See CAA section 172(c)(1).¹⁵ Such plans must also include, among other things, the adoption of all "reasonably available" control measures on existing sources, a demonstration of "reasonable further progress" toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. See, e.g., CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA. Unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment

¹⁵ Part D of title I of the Clean Air Act provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2-5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

demonstration and are not required to implement *any* specific emissions controls at existing sources to meet the planning requirements applicable to such areas. See CAA section 182(a) (“The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.”)¹⁶ Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. See CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that “Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas”).

Existing regulations – either local, state, or Federal – are typically a part of the reason why “additional” local controls are not needed to bring Marginal nonattainment areas into attainment. As described in the EPA’s record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that

¹⁶ States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, the EPA acknowledges that states within ozone transport regions must implement certain emissions control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

the majority of areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.*, without being re-classified to a Moderate designation). 83 FR 10376 (March 9, 2018). As part of a historical lookback, the EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. See Response to Comments, section A.2.4.¹⁷ Based on these historical data, the EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. See CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the

¹⁷ Available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122>.

NAAQS) and (b) (2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment area. *See generally* CAA sections 172(c) and 182(b)-(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, the EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also

required to demonstrate attainment and implement controls on existing sources—*i.e.*, with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

The EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict the EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emissions reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. See 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date.

See, e.g., CAA section 182(b)(1) & (2) (establishing “reasonable further progress” and “reasonably available control technology” requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin*. Rather, the court was considering whether the EPA, in implementing its obligation to promulgate Federal Implementation Plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 Moderate area attainment date for the 2008 ozone NAAQS. See 938 F.3d at 312-13. Although the court noted that petitioners had not “forfeited” an argument with respect to the Marginal area attainment date, see *id.* at 314, the court did not address whether its holding with respect to the 2018 Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding the EPA’s obligations relative to the then-applicable

2018 Moderate area attainment date because such considerations were not applicable to the case before the court.¹⁸ For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support the EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, the EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

B. Selection of the 1 ppb threshold

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors. The March 2018 memorandum also provides state-by-state contribution data for each nonattainment and maintenance receptor. The EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate Iowa's

¹⁸ The D.C. Circuit, in a short judgment, subsequently vacated and remanded the EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (December 21, 2018). *New York v. EPA*, No. 19-1019 (D.C. Cir. October 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the EPA conceded, the Close-Out "relied upon the same statutory interpretation of the Good Neighbor Provision" rejected in *Wisconsin*. *Id.* slip op. at 3. In the Close-Out, the EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York*, as in *Wisconsin*, the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

good neighbor obligation with respect to the 2015 ozone NAAQS and to find Iowa's reliance on EPA's modeling and identification of receptors reasonable and approvable.

The 2023 modeling projects that emissions from Iowa impact two potential receptors (the Milwaukee nonattainment receptor and Allegan maintenance-only receptor) above the 1 percent threshold that the EPA has recently applied in CSAPR and the CSAPR Update to address the 1997 and 2008 ozone NAAQS, respectively. However, based on the EPA's August 2018 memorandum, Iowa provides an analysis intended to demonstrate that a 1 ppb contribution threshold is appropriate for analyzing its linkages to the identified receptors. We propose to approve the State's conclusion that it does not contribute to any receptors for the purposes of the good neighbor provision, based on the information and analysis provided in the State's SIP submittal and additional analysis as presented below.

Consistent with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update described earlier, the EPA proposes to conclude that, at least where a state's impacts to downwind nonattainment and maintenance receptors are less than 1 percent of the NAAQS, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the

NAAQS at such locations. As discussed earlier, Iowa's impacts on all but two potential receptors identified in the March 2018 memorandum are below 1 percent of the 2015 ozone NAAQS. Therefore, where Iowa's impacts are less than 1 percent at a given receptor, the EPA proposes to find that this serves as a wholly sufficient basis to determine that the state will not significantly contribute to nonattainment or interfere with maintenance at that receptor for purposes of CAA section 110(a)(2)(D)(i)(I).

As discussed in its August 2018 memorandum, the EPA believes that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at step 2 of the four-step interstate transport framework, for the purposes of identifying linkages to downwind receptors. In this action, the EPA proposes to determine, for the reasons discussed below, that it is appropriate to apply a 1 ppb threshold for purposes of evaluating upwind state linkages at the Allegan County, Michigan and Milwaukee County, Wisconsin receptors.

As stated in the Iowa SIP submission, the EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Iowa is shown to have an impact below 1 percent of the 2015 ozone NAAQS to all but two downwind nonattainment and

maintenance receptors: the nonattainment receptor in Milwaukee County, Wisconsin, and the maintenance receptor in Allegan County, Michigan, to which Iowa's impacts are 0.79 ppb and 0.77 ppb, respectively.¹⁹ These values are greater than 0.70 ppb (1 percent of the 2015 ozone NAAQS) and less than a 1 ppb threshold. Therefore further analysis is required to determine whether or not a 1 ppb threshold is reasonable and appropriate to apply as a contribution threshold for evaluation of these receptors in step 2 of the four-step interstate transport framework.

In the August 2018 memorandum, EPA stated that the amount of upwind contribution captured with the 1 percent and 1 ppb thresholds is generally comparable, overall (i.e., on average across all receptors), and therefore EPA believes it may be reasonable and appropriate for states to use a 1 ppb contribution threshold at step 2 of the four-step interstate

¹⁹ See the March 2018 memorandum, attachment C.

transport framework. To determine the appropriateness of using a 1 ppb contribution threshold for purposes of this action, the EPA first assessed whether the general observation in the August 2018 memorandum that a 1 ppb threshold captures a comparable amount of upwind collective contribution as a 1 percent threshold holds true for the specific receptors at issue here. The EPA also considered the following additional quantitative factors to further evaluate the reasonableness and appropriateness of using a 1 ppb threshold at each receptor:

1. How does the impact of in-state emissions on ozone levels at this receptor compare to collective upwind impacts?
2. What are the impacts of individual upwind states linked at 1 ppb or higher to the receptor?
3. Are individual upwind states impacting this receptor between 1 percent and 1 ppb linked above 1 ppb to *other* receptors?

For the reasons that follow, the EPA proposes to evaluate these factors in a weight-of-the-evidence analysis to determine whether it is appropriate to apply a 1 ppb threshold for the Allegan and Milwaukee receptors at step 2 of the four-step interstate transport framework.

As to the first additional factor that the EPA proposes to consider, the magnitude of in-state emissions compared to collective upwind impacts at a receptor can indicate whether or not the ozone problem at a given receptor is largely driven by

transport from upwind states or by in-state emissions sources. A relatively large collective upwind impact compared to the in-state impact at a given receptor indicates that the ozone problem at the receptor is driven to an important degree by transport from upwind states, which may support applying a lower threshold. Conversely, if the in-state impact far exceeds the collective impact from upwind states, then this comparison could indicate that transport from upwind states is not an important part of the ozone problem at the receptor of interest, which may support applying a higher threshold.

As to the second additional factor, we consider the impacts of individual upwind states linked at 1 ppb or more to the receptor. When discussing the rationale for the threshold in the August 2018 memorandum, the EPA described that a comparable amount of emissions reductions from states with individual impacts below the 1 percent threshold would have a relatively small impact on the downwind receptors relative to other states with higher impacts. While greater than the impact of emissions reductions from states with impact below 1 percent, the relative air quality impact of emissions reductions from states with contributions between 1 percent and 1 ppb could be less important than states with contributions higher than 1 ppb. As

stated in the August 2018 memorandum "the use of a 1 ppb threshold to identify linked upwind states still provides the potential, at step 3, for meaningful emissions reductions in linked upwind states in order to aid downwind states with attainment and maintenance of the 2015 NAAQS."

As to the third additional factor, we consider whether individual upwind states that impact the receptor between 1 percent and 1 ppb are also linked to other receptor(s) at levels above 1 ppb. We would expect states to evaluate emissions reductions as part of a step 3 analysis in their SIPs regarding their contributions to the other receptor(s). Any resulting emissions reductions would also likely benefit the receptor to which the states contribute between 1 percent and 1 ppb.

The EPA evaluated each of these factors for the two downwind receptors (i.e., Milwaukee and Allegan) to which Iowa's impacts are greater than 1 percent of the NAAQS but less than 1 ppb.

1. Milwaukee Receptor

EPA's modeling shows the 2023 average design value at the Milwaukee, Wisconsin receptor is 71.2 ppb. At the Milwaukee receptor, the collective upwind ozone contribution captured with a 1 percent threshold is 28.4 ppb and with a 1 ppb threshold it is 23.6 ppb. Thus, a 1 ppb threshold captures 83 percent of the

upwind contribution that would be captured using a 1 percent threshold. Consistent with the August 2018 memorandum, these data indicate that the percent of upwind contribution captured at 1 ppb is generally comparable to the percent captured at 1 percent of the NAAQS, indicating that the 1 ppb threshold may be appropriate to apply to the Milwaukee receptor. We therefore proceeded to further examine data regarding the upwind impacts at this receptor using the three additional weight-of-evidence factors.

Under the first additional factor, transport of emissions from upwind states collectively contributes 46 percent (32.5 ppb) to the 2023 average ozone design value as compared to a 19 percent (13.3 ppb) impact from in-state emissions, highlighting that both upwind and in-state emissions have substantial impact at the Milwaukee receptor. In general, this factor would tend to weigh in favor of recognizing the importance of addressing upwind contributions at this receptor.

Under the second factor, the EPA's analysis shows that four upwind states contribute above 1 ppb to the Milwaukee receptor, and as noted above, the collective contribution from these four states is 23.6 ppb, which represents 72 percent of the total contribution of all the upwind states. By contrast, Iowa's contribution to the Milwaukee receptor is 0.79 ppb and

represents 2 percent of the total contribution of all upwind states. This factor tends to support the view that a substantial amount of upwind contribution from states linked above 1 ppb to this receptor will be captured and further assessed for potential emissions reduction at step 3 of the interstate transport framework.

Under the third factor, in addition to Iowa, there are five other upwind states that contribute between 1 percent and 1 ppb to the Milwaukee receptor. The collective contribution of these five additional states linked between 1 percent and 1 ppb is 4.1 ppb, which represents 12 percent of the total contribution of all the upwind states. Unlike Iowa, all five of these other upwind States that are linked between 1 percent and 1 ppb to the Milwaukee, Wisconsin receptor are also linked above 1 ppb to additional projected 2023 nonattainment or maintenance receptors. Thus, even though we would not expect these States to make emissions reductions to address the Milwaukee receptor if a 1 ppb threshold is applied, we do expect these States to evaluate their potential for additional emissions reductions to address their linkage to other receptors, which would also provide co-benefits to the Milwaukee receptor.

Based on this analysis, EPA finds that for the Milwaukee, Wisconsin receptor, a vast majority (85 percent) of the upwind states' emissions will be captured for further evaluation for possible control at step 3 of the four-step interstate transport framework from states which contribute above the 1 ppb threshold to this receptor or from states which contribute between 1 percent and 1 ppb to the Milwaukee receptor and above 1 ppb to at least one other receptor. This demonstrates that for the Milwaukee receptor, the effect of applying a 1 ppb threshold rather than a 1 percent threshold is likely less consequential than if a major share of contribution from upwind states contributing between 1 percent and 1 ppb to the Milwaukee receptor did not contribute above 1 ppb to any other receptor.

Given the technical information and analysis discussed above, the EPA finds that Iowa's use of the 1 ppb contribution threshold is reasonable and appropriate to support the conclusion that it will not contribute to the Milwaukee, Wisconsin nonattainment receptor.

2. Allegan Receptor

In assessing Iowa's conclusions as to the Allegan, Michigan receptor, the EPA applied the weight-of-evidence analysis identified above, again using the 2023 contribution data. EPA's modeling shows that the 2023 average design value at the

Allegan, Michigan receptor is 69.0 ppb. The upwind ozone collectively captured at Allegan, Michigan is 38.8 ppb and 36.6 ppb, respectively for the 1 percent and 1 ppb contribution thresholds, which indicates that a 1 ppb threshold captures nearly all (i.e., 94 percent) of the amount of contribution captured using a 1 percent threshold. The August 2018 memorandum states that if the amount captured at 1 ppb is generally comparable to the amount captured at 1 percent of the NAAQS, then the 1 ppb threshold may be appropriate. The EPA proposes to find that the amounts captured by the two thresholds for the Allegan receptor are comparable. We therefore proceeded to further examine the receptor using the three additional weight of evidence factors.

Under the first factor, transport of emissions from upwind states collectively contribute 62 percent to the 2023 average ozone design value compared to a 5 percent contribution from in-state emissions, highlighting that upwind emissions have a large impact at the Allegan, Michigan receptor. In general, this factor would tend to weigh in favor of recognizing the importance of upwind contributions at this receptor.

Under the second factor, seven upwind states contribute above 1 ppb to the Allegan, Michigan receptor, and as noted above the collective impact from these states is 36.6 ppb, which

represents 85 percent of the total impact of all the upwind states. By contrast, Iowa's contribution to Allegan, Michigan is 0.77 ppb and represents 2 percent of the total contribution of all upwind states. This factor strongly supports the view that a substantial amount of upwind contribution will be captured by states linked above 1 ppb to this receptor and further assessed for potential emissions reduction at step 3 of the interstate transport framework.

Under the third factor, in addition to Iowa, there are two other upwind states that contribute between 1 percent and 1 ppb to Allegan, Michigan. The collective contribution of these two states linked between 1 percent and 1 ppb is 1.4 ppb and this represents 3 percent of the total contribution of all the upwind states. One of the two additional states linked between 1 percent and 1 ppb to the Allegan, Michigan receptor is also linked above 1 ppb to other 2023 nonattainment or maintenance receptors. Thus, even though we would not expect this State to make emissions reductions to address the Allegan receptor if a 1 ppb threshold is applied, we do expect this State to evaluate its potential for additional emissions reductions due to its linkage to other receptors, which would also provide co-benefits to the Allegan receptor.

Based on this analysis, the EPA finds that for the Allegan, Michigan receptor, a vast majority (85 percent) of the contribution from upwind states will be captured using a 1 ppb threshold. Emissions in the upwind states that contribute above 1 ppb to this receptor or which contribute between 1 percent and 1 ppb to the Allegan receptor and above 1 ppb to at least one other receptor will be evaluated for possible control at step 3. The analysis presented here demonstrates that the effect of applying a 1 ppb threshold rather than a 1 percent threshold to the Allegan receptor is likely less consequential than if a major share of the total upwind contribution to the receptor came from states contributing between 1 percent and 1 ppb to the Milwaukee receptor and not contributing above 1 ppb to any other receptor.

Given the technical information and analysis discussed above, EPA finds that the state of Iowa's use of the 1 ppb contribution threshold is reasonable and appropriate to support the conclusion that it will not contribute to the Allegan, Michigan maintenance receptor.

VII. What Action is the EPA Taking?

The EPA is proposing to approve Iowa's November 30, 2018, submission addressing certain infrastructure elements for the 2015 ozone NAAQS. Specifically, the EPA is proposing to approve

the following elements of CAA section 110(a)(2)(D)(i)(I) - significant contribution to nonattainment of the NAAQS (prong 1) and interference with maintenance of the NAAQS (prong 2). The EPA is processing this as a proposed action because it is soliciting comments. Final rulemaking will occur after consideration of any comments.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to review state choices, and approve them if they meet the criteria and requirements of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Air quality control region, Incorporation by reference, Infrastructure, Intergovernmental relations, Ozone, Reporting and record-keeping.

Dated: February 25, 2020.

James Gulliford,

Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q-Iowa

2. In §52.820, the table in paragraph (e) is amended by adding the entry "(53)" in numerical order to read as follows:

§52.820 Identification of plan.

* * * * *

(e) ***

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* * * * *				
(53) Section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2015 Ozone (O ₃) NAAQS	Statewide	11/30/2018	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	This action approves the following CAA elements: 110(a)(1) and 110(a)(2)(D)(i)(I)—prongs 1 and 2. [EPA-R07-OAR-2020-0093; FRL-10005-86-Region 7].

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